

Case No. 16,841.

{18 N. B. R. 543.}¹

IN RE VANDERHOEF ET AL.

District Court, S. D. New York.

Aug. 29, 1878.

BANKRUPTCY—DEFECTIVE PETITION—AMENDMENT.

A petition by one partner against his copartner omitted to state the residence of such copartner. *Held*, that the omission might be supplied by amendment.

{In re Nathaniel S. W. Vanderhoef and John P. Beatty. Petition in bankruptcy.}

W. B. Hornblower, for the motion.

B. F. Forster, contra.

CHOATE, District Judge. This is a petition by one partner against his copartner. The petitioner is described as “of the city, county, and state of New York.” The petition alleges that the petitioner and his copartner Beatty “have been for the last four months copartners, carrying on business in the city of New York.” There is no averment as to the residence of Beatty. Beatty appeared upon the return day of the order to show cause, and proceedings have been instituted for a composition. At the first meeting in composition certain creditors appeared and had noted on the record their objections to the jurisdiction of the court that it is not averred that the debtors reside in the United States, and that the debts exceeding three hundred dollars, which it is averred that the debtors owe, are debts provable in bankruptcy. The debtors now join in a motion that the petitioner be allowed to amend his petition in the particulars complained of. It is insisted on the part of the opposing creditors that the court, not having got jurisdiction of the case by reason of the want of proper averments in the petition, showing jurisdiction, the amendment cannot be allowed. But the authorities are clear that if the facts are such as sustain the jurisdiction, such necessary averments may be supplied by amendment, *Jackson v. Ashton*, 10 Pet. [35 U. S.] 480. The question whether the averment as to the debts is defective is not passed upon. Motion granted.

{See Case No. 16,840.}

¹ [Reported by permission.]